

Exhibit 1 to Exhibit A

Exhibit 1 - U.S. Patent No. 6,233,389 in View of ReplayTV DVR

In my opinion, claims 31 and 61 of U.S. Patent No. 6,233,389 (“the ‘389 Patent”) are invalid in view of the ReplayTV DVR. The ReplayTV DVR renders obvious, in combination with other prior art disclosed below, the asserted claims of the ‘389 Patent under 35 U.S.C. § 103.

I understand that the ReplayTV DVR qualifies as prior art under 35 U.S.C. § 102(g). If it is determined that the ReplayTV DVR does not strictly qualify as prior art, the development and commercial introduction of the ReplayTV DVR establishes that the subject matter of the asserted claims of the ‘389 patent was generally known contemporaneously with the earliest effective priority and/or invention date for those claims.

In my opinion, the asserted claims of the ‘389 patent are invalid under 35 U.S.C. § 103 in view of the Replay TV DVR in combination with of any one or more of the following references or systems: U.S. Patent No. 5,557,724 to Sampat; U.S. Patent No. 5,477,263 to O’Callaghan et al.; U.S. Patent No. 5,949,948 to Krause, et al.; U.S. Patent No. 6,304,714 to Krause, et al.; U.S. Patent No. 5,721,815 to Ottesen; US Patent No. 5,815,689 to Shaw; US Patent No. 6,209,041 to Shaw; U.S. Patent No. 5,574,662 to Windrem; U.S. Patent No. 5,513,011 to Matsumoto; U.S. Patent No. 5,559,999 to Maturi; U.S. Patent No. 5,774,186 to Brodsky; U.S. Patent No. 5,973,679 to Abbott; U.S. Patent No. 5,442,390 to Hooper; U.S. Patent No. 5,438,423 to Lynch; U.S. Patent No. 6,005,564 to Ahmad; U.S. Patent No. 5,615,940 to Cobbley; U.S. Patent No. 5,701,383 to Russo; U.S. Patent No. 5,719,786 to Nelson; Hanna et al., “Demultiplexer IC for MPEG2 Transport Streams,” Microsoft Developer Network Documentation (July 1997 Release); Chatterjee et al., “Microsoft DirectShow: A New Media Architecture,” Cline et al. “DirectShow RTP Support for Adaptivity in Networked Multimedia Applications,” R. Johnston, “A Digital Television Sequence Store,” European Patent No. 0594241 to Thomason; Jonathan C. Soo, “An Architecture for Networked Multimedia,” Christopher J. Lindblad, “A Programming System for the Dynamic Manipulation of Temporally Sensitive Data,” Steven Niemczyk, “StreamObjects: Dynamically-Segmented Scalable Media Over the Internet,” the Tektronix PDR 200 Profile Video File Server. I understand that all of the above-identified references or systems are prior art under one or more provisions of 35 U.S.C. § 102.

6,233,389 Claim Language	ReplayTV DVR
	Claim 31
31. (pre) A process for the simultaneous storage and play back of multimedia data, comprising the steps of:	<p>The Replay TV DVR is a digital video recorder consumer electronics product that allows simultaneous storage and play back of media data, e.g., MPEG encoded video streams.</p> <p>US Patent Pub. No. 2002/0057893 (“Wood”) discloses the ability for simultaneous storage and play back of video data:</p> <p style="padding-left: 40px;">The ability to play back part of a show while the show is being recorded can also allow a user who sits down to watch a television show after it has begun being recorded to simply press the Play button to begin playing back the show from the beginning, even while the remainder of the show is still airing and being recorded.</p> <p style="text-align: right;">[Wood at 0007]</p>

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